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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 003842

SIPDIS

DEPARTMENT FOR EUR/SE

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TAGS: [PREL](#) [MARR](#) [TU](#)

SUBJECT: ARTICLE 98: GOT SAYS IT SUPPORTS AGREEMENT IN PRINCIPLE, BUT WARY OF EU PRESSURE

(U) Classified by DCM Robert Deutsch; reasons 1.5 b and d.

11. (C) Summary: GOT officials told a visiting State and Defense Article 98 delegation June 10 that the GOT in principle favors reaching an Article 98 agreement with the US, but cannot do so at this time because of intense EU pressure. The officials noted that Turkey is not a signatory to the International Criminal Court (ICC), and said the GOT would not turn Americans over to the ICC. The delegation members noted that the EU had encouraged the US to reach Article 98 agreements, and said the US is seeking fair treatment, not impunity for war crimes. They said the fact that the US has reached Article 98 agreements with 42 countries indicates the EU view is not universal. They argued that EU pressure will only increase as Turkey's EU candidacy advances. End Summary.

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EU Pressure Puts Turkey in "Awkward Position"  
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12. (C) Daryal Batibay, Director General of the MFA Department of Multilateral Political Affairs, and Tunc Ugdul, Batibay's deputy, told Patricia McNerney, T Senior Advisor, and Col. Al Ringgenberg, DOD/GC, that Turkey, as an EU candidate country, is under high-level EU pressure not to sign an Article 98 agreement with the US that violates the EU's September 2002 Guiding Principles. In May, they said, the EU sent a letter to all candidate countries co-signed by EU Enlargement Commissioner Verheugen and Greek FM Papandreou (in his capacity as EU Council Chairman) "strongly recommending" against such agreements. Batibay said this put Turkey in an "awkward position," because the Guiding Principles appear to be a non-starter for the US. McNerney said the Guiding Principles are contradictory in parts and too narrow in scope -- they would cover only Amcit military personnel directly involved in a mission. She said the Principles represent a unilateral EU interpretation of the Rome Statute -- the fact that the US has reached Article 98 agreements with 42 countries, including a number of ICC members, indicates the EU view is not universal. Ringgenberg said that, due to the efforts of some EU states, the Principles were designed to make it as difficult as possible to reach Article 98 agreements. Nevertheless, the US is making progress with a number of EU states that are sympathetic to the US view, he said. He noted it was the EU that suggested the US pursue Article 98 agreements. McNerney said the US position has been distorted; we are not seeking impunity for our citizens, only for agreements preventing our personnel from being surrendered to a Court to which the US does not belong. She said the US can prosecute any crime in the Rome Statute under its domestic laws, and has a strong record of prosecuting war crimes.

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GOT: We Would Not Surrender Americans to ICC  
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13. (C) Batibay said the GOT would like to reach an Article 98 agreement with the US, particularly in light of recent tensions in the US-Turkey relationship. Ugdul added that the GOT agreed in principle with the US position on the ICC. Sovereign nations should be primarily responsible for trying war crimes suspects; the ICC should play only a supplementary role, he said. Unfortunately, however, the US position is being distorted, especially in Europe, and has emerged as a political controversy, he said. The timing is not right for Turkey to sign an agreement, he averred. Batibay agreed, suggesting that the GOT might be able to reach an Article 98 agreement after the June 25 US-EU summit, provided the US and EU can work out their differences on the issue. In the meantime, Batibay argued, an Article 98 agreement should not be an urgent US-Turkey bilateral issue. Unlike the other EU candidate countries, Turkey is not a signatory to the ICC and therefore is under no obligations to turn suspects over to the Court, he noted. As a NATO member and close US ally, the

GOT would not turn over Americans to the ICC, he said. Batibay said Turkey will eventually have to join the ICC before becoming a full EU member, but that is years away. Ringgenberg said he understands the GOT is under pressure from the EU. However, he argued, this is the time to reach an Article 98 agreement, because EU pressure will only increase as Turkey's EU candidacy progresses. Ringgenberg suggested Turkey might be able to follow an approach pursued by the Philippines, which in May reached an Article 98 agreement with the US and at the same time announced its intention to join the ICC. Batibay said the GOT will consider that approach.

PEARSON